



## **DIVERSION/DISCIPLINE COMMITTEE MEETING**

### **AGENDA**

**DCA Headquarters  
1625 N. Market Blvd  
Hearing Room S-102  
Sacramento, CA 95834**

**March 10, 2011**

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**Thursday, March 10, 2011 – 9:00 am – 10:30 am**

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- 8.0 Review and Approve Minutes:**
  - Ø January 5, 2011
- 8.1 Nursys Discipline Data Comparison (Scrub) Update**
- 8.2 Internet Disclosure Policy**
- 8.3 Disciplinary Guidelines**
- 8.4 Enforcement Program Update and Statistics**
- 8.5 Probation Program Update and Statistics**
- 8.6 Diversion Program Update and Statistics**
  - 8.6.1 Committee Member Term Resignations**
  - 8.6.2 Diversion Evaluation Committee Member Appointments**
- 8.7 Public Comment for Items Not on the Agenda**

**NOTICE:**

All times are approximate and subject to change. Items may be taken out of order to maintain a quorum, accommodate a speaker, or for convenience. The meeting may be canceled without notice. For verification of the meeting, call (916) 574-7600 or access the Board's Web Site at <http://www.rn.ca.gov>. Action may be taken on any item listed on this agenda, including information only items.

Public comments will be taken on agenda items at the time the item is heard. Total time allocated for public comment may be limited.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Administration Unit at (916) 574-7600 or email [webmasterbrn@dca.ca.gov](mailto:webmasterbrn@dca.ca.gov) or send a written request to the Board of Registered Nursing Office at 1625 North Market #N-217, Sacramento, CA 95834. (Hearing impaired: California Relay Service: TDD phone # (916) 322-1700). Providing your request at least five (5) business days before the meeting will help to ensure the availability of the requested accommodation.

Board members who are not members of this committee may attend meetings as observers only, and may not participate or vote. Action may be taken on any item listed on this agenda, including information only items. Items may be taken out of order for convenience, to accommodate speakers, or maintain a quorum.



## **DIVERSION/DISCIPLINE COMMITTEE MINUTES**

**DATE:** January 5, 2010

**SITE:** Hilton San Diego Mission Valley  
901 Camino del Rio South  
San Diego, CA 92108  
Phone: 619-543-9000

**MEMBERS PRESENT:** Richard Rice, Chair  
Judy L. Corless, BSN, RN  
Jeannine Graves, RN

**STAFF PRESENT:** Louise Bailey, M.Ed., RN, Executive Officer  
Stacie Berumen, Enforcement Division Chief  
Carol Stanford, Diversion Program Manager

The Chair called the meeting to order at about 9:16 a.m.

### **8.0 REVIEW AND APPROVE MINUTES:**

Approve/Not Approve: Minutes of July 13, 2010, September 22, 2010, and November 16, 2010

**M/S/C: Moved by Judy Corless, Seconded by Jeannine Graves, Carried**

#### **8.1 Nursys Discipline Data Comparison (Scrub) Update**

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records.

Currently, 1,805 records have been reviewed on the active license list. Determination was made whether the cases warranted a request for the other state's discipline documents. This review resulted in 1,050 requests for out-of-state documents. The documents will be evaluated and a decision made as to the appropriate action needed.

Review of the inactive license spreadsheet is in progress and will continue until complete. Holds have been placed on 1,915 inactive records to alert staff when a nurse on the list attempts to activate their license. This alert will allow staff to immediately request and review the records to determine if out-of-state discipline documents are needed for possible action on the license.

The status of the documents reviewed:

Referred to the Attorney General	251
Pleadings Received	202
Notices of Defense Received	112
Referred to Cite and Fine	32
Closed Without Action (Action taken by CA (prior to 2000) but not reported to Nursys or information approved at time of licensure)	426
Settlement or Decision Pending	68

#### **UPDATE:**

The National Council of State Boards of Nursing (NCSBN) announced at its Annual Meeting on or about August 12, 2010, a new process in development for non-licensure participating boards to participate in sharing discipline information. The NCSBN Board of Directors met on December 7-9, 2011, to have a final discussion and vote on this modified member participation. The Board of Directors decided to allow the modified member participation. The Board will meet in February 2011 to decide what if any cost will be charged for the modified member participation.

#### **8.2 Internet Disclosure Policy**

The Board of Registered Nursing (BRN) began posting discipline information on its web site in 2006. This was done in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The BRN provides this information to better inform and protect California's health care consumers.

Business and Professions Code Section 27 requires a number of boards and bureaus under the direction of the Department of Consumer Affairs, to post information regarding licensees on their web sites. The BRN is not included in this code section.

BRN provides information on the internet to indicate any disciplinary actions and their status through a series of codes from our legacy computer system. The discipline documents are added to support and explain actions taken.

As of December 22, 2010, there are approximately 5,241 discipline documents listed on our website. These documents include denial letters, statements of issue, accusations, petitions to revoke probation, interim suspension orders, PC 23 criminal court practice suspension orders, and final decisions.

Current and past Board members have expressed concern and believe it is vitally important the public is aware of nurses who may pose a danger to the public.

In the last year, BRN staff has received requests to remove discipline documents from our website for a variety of reasons such as: it has been many years since the action was taken, the conviction included in the disciplinary action has been dismissed, expunged, or sealed, it hampers a licensee's ability to find employment, or the licensee is harassed by co-workers.

The BRN has been unable to provide all discipline documents on the website due to limited staff resources and ability to access records quickly. Discipline documents continue to be requested on a routine basis by members of the public if they are not available on the website. When staff requests a file to obtain the discipline documents they are added to the website at the same time they are sent out to the requestor.

DCA and BRN past practice is to retain the documents on the website indefinitely but at least until the BRN no longer has jurisdiction over a licensee.

**FULL BOARD RECOMMENDATION ON SEPTEMBER 24, 2010:**

Issue returned to the Diversion/Discipline Committee to create a policy for discipline record retention on the internet.

**SUB-COMMITTEE RECOMMENDATION ON NOVEMBER 16, 2010:**

Outside materials were not provided at the sub-committee meeting and held for next Diversion/Discipline Committee meeting for review and discussion.

**ISSUES FOR COMMITTEE CONSIDERATION:**

How long should the BRN retain disciplinary materials considered public documents on the website?

The committee asked that the discipline summary document provided by DCA Supervising Legal Counsel, Don Chang be provided to the rest of the board for review and discussion at the next board meeting.

**8.3 Enforcement Program Update and Statistics**

**Staff**

In addition to a hiring freeze, with an unspecified ending date, and the requirement earlier this year to identify 5% salary savings before the budget is signed, the BRN was required to identify an additional 5% for permanent staffing reductions, which equals \$417,000. To avoid a layoff situation, five of the CPEI special investigator positions have been targeted to cover this requirement.

The Department of Consumer Affairs has resubmitted the hiring exemption request for the CPEI positions in the hopes the administration will authorize hiring for at least some of the enforcement positions. BRN has been charged with extremely strict case completion time frames yet we lack the ability to hire for any of the approved positions.

Since the last committee meeting we have lost our Citation and Fine Analyst to the Dental Board's Enforcement Program along with two of our three enforcement support staff who are transferring to other units within the BRN before the end of December 2010. The Citation and Fine Program will now be extremely limited due to lack of staff resources and all remaining enforcement staff will have to do their own support staff tasks in addition to managing their cases.

We have advertised for the five limited term positions, the NEC classification, the Complaint Intake Manager and a variety of existing enforcement vacancies and hope we can hire with internal DCA

transfer candidates. In preparation for any type of hiring window the enforcement, probation, and diversion program managers spent almost two full weeks in December 2010 interviewing candidates for all possible vacancies within the Enforcement Division.

We continue to be very concerned that our three existing limited term staff will either be forced to leave state service or return to their previous positions since they will not be able to stay beyond their two year hiring period which will end within the next six months. We will do what we can given the numerous hiring limitations to keep these staff for as long as possible; however, with no guarantees, those individuals may seek employment elsewhere.

### **Program**

On November 16, 2010, Stacie Berumen, Kathy Hodge, Beth Scott and Leslie Brast, BRN liaison DAG met with AGO staff in the Oakland and San Francisco offices. On December 9, 2010, we also met with the Sacramento AGO with Don Chang, BRN legal counsel. These meetings were to go over BRN issues of concern, process changes, and to put some faces with the names. The meetings went very well and we plan to meet on an annual basis with each office to improve our communication and resolve any issues that come up as quickly as possible.

The BRN Enforcement and Probation programs will begin preparing and serving default decisions coming out of the Oakland and San Francisco AG's offices as of December 25, 2010. This will be done under the direction and supervision of attorneys in the DCA legal affairs office. Don Chang has been reviewing default packages prepared by the AGO which include the new evidence packet to develop the policies and procedures which will govern their preparation. He will begin working with both programs right after the Christmas holiday. The default decisions should begin being served by BRN staff shortly thereafter.

### **BRN Investigations**

BRN investigators have completed 104 investigation reports; however, our pending investigations continue to add up and are now at 703. We only have two retired annuitant investigators actively working our cases in Northern California.

We have sent back 33 cases to DOI which were reviewed by the NECs for focused investigations. An additional 60 of our oldest cases have also been sent back to DOI for investigation. DOI has met with Rico Stephan and Stacie Berumen to review and identify cases that will be returned to DOI for investigation. The BRN cases have been identified by zip code and can be referred back to offices who can handle the additional workload.

### **Statistics**

There are 439 pending DOI investigations and 703 pending BRN investigations. There are 1,193 cases pending at the AG's office which continues to be the highest ever. The BRN is now the AGO's biggest client, surpassing the Contractor's State Licensing Board.

From July 1, 2010 to December 22, 2010, enforcement served 327 accusations. Enforcement prepared nine (9) default decisions from July 1, 2010 to July 26, 2010, prior to the process returning to the AG's office on July 27, 2010.

Please review the old monthly enforcement report (attachment) which has additional breakdowns of information. The new report required to be submitted to the Deputy Director of Enforcement and Compliance will be included in the next committee packet due to quarterly reporting.

#### **8.4 Probation Program Update and Statistics**

##### **Staff**

The Probation Program has a tentative offer of employment to a qualified candidate for the vacant Probation Monitor position and awaits formal approval from DCA human resources staff. However, another probation monitor has a tentative offer for one of our CPEI limited term positions in the Diversion Program. She also awaits formal approval from DCA HR staff. As a result, the probation program again has one vacancy for a probation monitor and has initiated recruitment efforts with the limitation of only being allowed to hire DCA lateral transfer candidates. Additionally, the probation program has a vacant limited term Office Technician position and has initiated recruitment efforts to fill this vacancy.

##### **Program**

On December 16, 2010, the Probation Program staff conducted a probation monitoring workshop for the staff of the Attorney General's office in Oakland and San Francisco. This workshop was designed to share issues regarding monitoring probationers, settling cases for probation and prosecuting petitions to revoke probation. The workshop received very favorable feedback from AG office staff in attendance with the only caveat that it was too short.

The Probation Program staff continues to participate in designing a multi day course directed towards probation monitors. This course will be comprehensive training to provide actual tools and knowledge for probation monitors state wide. The training is scheduled to be given in March 2011. Additionally, the probation staff provided training at the second Enforcement Academy in December.

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records. Updates will be provided at each DDC meeting.

The Probation Program will begin reviewing the Recommended Guidelines for Disciplinary Orders and Conditions of Probation in January 2011. They were last revised in 2002 and are long overdue for cleanup and to incorporate recent legislative and regulatory changes.

The Probation Program began a pilot project with Phamatech Laboratories to determine if the Department wide contract for random drug screening would benefit the program. A limited number of probationers began testing with this vendor and the staff has been monitoring all aspects of the program to ensure they meet BRN monitoring requirements. Issues which have been identified have been brought to Phamatech's attention and are currently being resolved.

##### **Statistics**

Below are the statistics for the Probation program from October 29, 2010 to December 17, 2010.

Probation Data	Numbers	% of Total
Male	125	25%

Probation Data	Numbers	% of Total
Female	368	75%
Chemical Dependency	276	56%
Practice Case	163	33%
Mental Health	4	<1%
Conviction	54	11%
Advanced Certificates	44	9%
Southern California	261	53%
Northern California	232	47%
Pending at the AG	71	14%
License Revoked	4	<1%
License Surrendered	7	1%
Terminated	1	<1%
Completed	7	1%
Total in-state probationers	493	

## 8.5 Diversion Program Update and Statistics

### Program Update

The Nurse Support Group Facilitator's Conference was conducted on December 1, 2010 in Sacramento. It was well attended by the NSG facilitators, the probation and diversion staff, the Maximus case managers, Diversion NEC liaison and the Enforcement Chief. It was an informative and productive conference that opened greater communication between the facilitators, Board staff and the contractor. The history of nurse support groups was provided and information clarifying the facilitators' roles and responsibilities as outlined in the Contract, SB1441, and recommended guidelines for probationers was also provided.

Dr. Donna Smith, the Medical Review officer for First Lab, was the guest speaker for the conference. She served as the Acting Director, Drug Enforcement and Program Compliance, for the U.S. Department of Transportation in Washington, D.C., coordinating the development, implementation, and enforcement of policies and procedures for the transportation industry workplace drug and alcohol testing programs. She also served as Senior Advisor to the Secretary of Transportation for monitoring all components of the DOT and industry drug and alcohol testing programs, as well as coordinating its enforcement and compliance efforts. She was a principal author of the DOT drug and alcohol testing regulations and numerous government publications on drug and alcohol testing procedures. Her particular areas of expertise are in specimen collection, laboratory analysis, medical review officer procedures, employer policy development and implementation, and regulatory compliance.

Dr. Smith explained the significance of the drug testing, EyG testing, out of ranges, and dilutes for RNs in Diversion and Probation and how it fits into the entire picture of monitoring individuals with substance abuse disorders. The information was well received. A copy of the minutes of the NSG meeting, Dr. Smith's Bio, and a copy of her presentation is available upon request.

On December 2, 2010, the Diversion Program also conducted a DEC Orientation Meeting in Folsom. This provided required training for new DEC members to familiarize them with their role

and responsibilities related to their appointment and other State requirements. Dr. Smith went into greater depth regarding the significance of monitoring the nurses in Diversion and the testing protocols.

On December 8, 2010, the Diversion Program manager was subpoenaed to testify in Federal Court regarding a case for the Pharmacy Board involving our previous drug testing company's use of EtG, a metabolite of alcohol, in the drug panel and the protocols set up to handle and evaluate those individuals discovered to be positive for the substance. This was a test case as there are several other cases pending involving the use of EtG in monitoring programs. The jury in this case ruled that the drug testing companies were not negligent in their use of this test and were not negligent in their handling of the plaintiff.

On December 17, Anita Rodriguez was hired as an AGPA for the Diversion Program. Anita will be a great asset to the program as she is transferring from the BRN's Probation unit and comes with experience and knowledge regarding the Board and RNs who have been disciplined for substance abuse or mental illness.

#### **Contractor Update**

Virginia Matthews, Maximus Program Director, will present a brief report and overview regarding upcoming events and developments.

#### **Diversion Evaluation Committees (DEC)**

The Diversion Evaluation Committee members are to be commended for their continued support of the Diversion Program despite the fact that due to the state budget many of them were delayed in receiving reimbursement for their travel expenses. Many of them have come to the Board with years of experience in various fields of expertise and are vital to the overall success of the BRN's Diversion Program. Their continued dedication especially during the State's economic crisis is appreciated.

There are currently 9 vacancies as follows: two Registered Nurses, six Physicians, and one Public member. Recruitment efforts continue.

#### **Statistics**

Attached is the Monthly Statistical Summary Report for October and November, 2010. As of November 30, 2010, there were 1,522 successful completions.

### **8.6 Public Comment for Items Not on the Agenda**

Tricia Hunter made a comment.

The Chair adjourned the committee meeting at 10:10 a.m.

Approved: \_\_\_\_\_



**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM:** 8.1  
**DATE:** March 10, 2011

**ACTION REQUESTED:** Nursys Discipline Data Comparison (Scrub) Update

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records.

Currently, 1,805 records have been reviewed on the active license list. Determination was made whether the cases warranted a request for the other state's discipline documents. This review resulted in 1,050 requests for out-of-state documents. The documents will be evaluated and a decision made as to the appropriate action needed.

Review of the inactive license spreadsheet is in progress and will continue until complete. Holds have been placed on 1,915 inactive records to alert staff when a nurse on the list attempts to activate their license. This alert will allow staff to immediately request and review the records to determine if out-of-state discipline documents are needed for possible action on the license.

The status of the documents reviewed:

Referred to the Attorney General	278
Pleadings Received	236
Notices of Defense Received	132
Referred to Cite and Fine	37
Closed Without Action (Action taken by CA (prior to 2000) but not reported to Nursys or information approved at time of licensure)	488
Settlement or Decision Pending	106

**UPDATE:**

The National Council of State Boards of Nursing (NCSBN) announced at its Annual Meeting on or about August 12, 2010, a new process in development for non-licensure participating boards to participate in sharing discipline information. The NCSBN Board of Directors made the decision to allow modified member participation at their December 7-9, 2011 meeting. The Board of Directors

met again on February 14-16, 2011, and decided there would be no fee charged for the modified member participation. NCSBN staff are in the process of preparing the contracts. Once the contract has been approved by all parties BRN/DCA information technology staff will begin the process to send all of our licensing data to NCSBN.

**AG COSTS:**

As of January 31, 2011, the BRN has expended \$411,997.50 at the AG's office on the Nursys Scrub cases.

**NEXT STEP:**

Continue to order, review, and determine what, if any, action will be taken against California licensees who have been disciplined by another state/agency. Updates will be provided to the committee and board at each meeting. Follow directions given by committee and/or board.

**FINANCIAL  
IMPLICATIONS,  
IF ANY:**

Updates will be provided at each DDC meeting regarding the data comparison results and costs at the AG's office and OAH for review and possible action.

**PERSON TO CONTACT:**

Stacie Berumen, Enforcement Division Chief  
(916) 574-7678

Beth Scott, Probation Program Manager  
(916) 574-8187

**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM: 8.2**  
**DATE: March 10, 2011**

**ACTION REQUESTED:** Internet Disclosure Policy

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

The Board of Registered Nursing (BRN) began posting discipline information on its web site in 2006. This was done in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The BRN provides this information to better inform and protect California's health care consumers.

BRN provides information on the internet to indicate any disciplinary actions and their status through a series of codes from our legacy computer system. The discipline documents are added to support and explain actions taken.

In the last year, BRN staff has received requests to remove discipline documents from our website for a variety of reasons such as: it has been many years since the action was taken, the conviction included in the disciplinary action has been dismissed, expunged, or sealed, it hampers a licensee's ability to find employment, or the licensee is harassed by co-workers.

Enforcement staff has asked the committee and board members for a policy regarding discipline record retention on the internet.

**FULL BOARD RECOMMENDATION ON SEPTEMBER 24, 2010:**

Issue returned to the Diversion/Discipline Committee to create a policy for discipline record retention on the internet.

**SUB-COMMITTEE RECOMMENDATION ON NOVEMBER 16, 2010:**

Outside materials were not provided at the sub-committee meeting and held for next Diversion/Discipline Committee meeting for review and discussion.

**COMMITTEE RECOMMENDATION ON JANUARY 5, 2011:**

Provide the document prepared by DCA Supervising Legal Counsel, Don Chang, on December 30, 2010, to the full board for consideration and review at the January meeting.

**FULL BOARD RECOMMENDATION ON FEBRUARY 2, 2011:**

The board members requested staff prepare a series of options for consideration after reviewed and approved by DDC at their next meeting in March 2011.

**NEXT STEP:**

Discuss and create a formal policy for retaining discipline records on the internet. Follow directions given by committee and/or board.

**FINANCIAL  
IMPLICATIONS,  
IF ANY:**

None at this time.

**PERSON TO CONTACT:**

Stacie Berumen, Enforcement Division Chief  
(916) 574-7678

**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM:** 8.3  
**DATE:** March 10, 2011

**ACTION REQUESTED:** Disciplinary Guidelines

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

The Board of Registered Nursing was tasked with implementing SB 1441. In order to comply with the mandate the BRN has been working with our DCA legal counsel to modify the Board of Registered Nursing's Recommended Guidelines for Disciplinary Orders and Conditions of Probation.

A regulatory proposal was sent to the Office of Administrative Hearings and was noticed to the public approximately two weeks after submission.

The proposed language changes will be provided under separate cover for review and discussion at the committee and upcoming board meeting. The plan is to hold a public hearing to obtain public comment on this matter at the June 2011 board meeting.

**NEXT STEP:** Review and discuss at the committee and board meeting. Follow directions given by committee and/or board.

**FINANCIAL  
IMPLICATIONS,  
IF ANY:**

None at this time. Updates will be provided at each DDC meeting for review and possible action.

**PERSON TO CONTACT:** Stacie Berumen, Enforcement Division Chief  
(916) 574-7678

**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM:** 8.4  
**DATE:** March 10, 2011

**ACTION REQUESTED:** Information Only: Enforcement Program Update and Statistics

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

**PROGRAM UPDATE**

**Staff**

In response to Executive Order, B-3-11 ordering a hiring freeze, DCA withdrew all exemption requests as a total package and has given each board and bureau the task of completing their own individual exemption requests customized to their specific requirements. However, we are waiting for the Department of Finance's paperwork requirements to request exemptions. Additionally, budgets is working with the Department of Finance to determine if DCA has already reached their required budget reductions so that our department, as a whole, would be exempt from the hiring restrictions. BRN has been charged with extremely strict case completion time frames yet we continue to lack the ability to fill the necessary, approved positions, or to backfill our existing vacancies.

Before the hiring freeze was instituted in February, we were fortunate enough to fill one of our two vacant OT/Support vacancies with Yadira Quintana, who transferred from Contractors State Licensing Board; and one of our new limited term Complaint Intake SSA positions with Lisa King, who transferred from the Bureau of Electronic Appliance Repair, Home Furnishings and Thermal Insulation. In addition to her Complaint Intake duties, we plan to cross-train Lisa in serving accusations and processing final decisions to serve as back up to the only analyst we have doing these duties. Yadira has taken to her support duties in record time. Both employees have adapted well to our unit and are definite assets to our team.

We have been unable to fill the Cite and Fine AGPA position vacated by Shannan Borton on December 20, 2010, or the OT position vacated by Ed Montoya on January 3, 2011.

In anticipation of a hiring window, interviews were held in December for various positions which yielded several quality candidates. Unfortunately, the hiring window did not happen and we can only hope that these individuals will still be available if/when we are able to hire.

We continue to be very concerned that our three existing limited term staff will either be forced to leave state service or return to their previous positions since they will not be able to stay beyond their two year hiring period which will end within the next two months. We have exhausted all measures to keep

these employees; however, with the hiring restrictions, we will most likely lose all three, leaving the Enforcement unit only 13.5 staff members, plus the program manager.

Kathy Hodge is attending the eight-session DCA Management Academy which will be completed on April 7. Several Enforcement staff are enrolled in the next DCA Enforcement Academy scheduled for March 14-18.

### **Program**

Until February 25, 2011, the Citation and Fine Program had been suspended for two months due to lack of available staff resources. In addition, with the loss of two of three OT/Support staff during Dec/Jan/Feb, the case analysts had to complete their own support staff tasks in addition to managing their cases, resulting in slower case movement and highly reduced follow-up with the Attorney General's office. In addition to her case management duties, Lorraine Clarke has stepped up and been trained to work the Cite and Fine desk as her time permits. We currently have 125 pending citations, many of which may result in informal citation conferences.

Approximately 850 license renewal holds have been placed on licensees for license expiration in March and April 2011, who have not complied with the retroactive fingerprint requirements and the BRN has no proof of submission. Enforcement will work with the fingerprint liaison in the Administration unit to add license renewal holds for all licensees who have not complied with the retroactive fingerprint requirements. We will also work to send out letters to these licensees in an effort to resolve the renewal holds before the licensee renews the license as time and resources permit.

We have been having work sessions with case analysts and complaint intake to go over complaint action criteria to ensure consistency in handling the various types of complaints.

BRN was audited by the FBI on February 9, 2011, and are pleased to report we passed the audit. We learned that information being reported to DOJ from the FBI is filtered before it is sent to us. When the FBI reports criminal information to DOJ, federal law requires the individual state to confirm convictions prior to dissemination requesting agencies. This answers questions as to why we many times do not receive dates on FBI convictions. The FBI auditor was scheduled to audit DOJ the following day and address issues raised by BRN staff.

We are now receiving electronic billing information on a monthly basis from the Attorney General's office and are still working to determine where the money is being spent. We have grave concerns about the time spent and billed to the BRN as we have been told by AGO staff that their billing is based on a minimum billing amount of 15 minute increments. So we are billed 15 minutes for all emails read, all emails responded to are an additional 15 minutes, even if the email only takes 1-2 minutes to read or respond to. That totals \$42.50 for each exchange of information.

The BRN Enforcement and Probation programs began preparing and serving default decisions coming out of the Oakland and San Francisco AG's offices as of December 25, 2010. Evaluation of the pilot project has been extremely limited as Enforcement has only received one qualifying default

case since the pilot began. Staff has worked with Don Chang to define necessary documents to be included in the evidentiary packets and a process is in place for legal review and approval of all defaults prepared by both units. Due to the small number of defaults prepared during the pilot program we cannot make a determination whether it is appropriate to return all defaults to the BRN. We plan to ask for an extension of the pilot to give us an opportunity to collect more data to support the BRN resuming the responsibility of preparing defaults from all AG offices.

### **BRN Investigations**

We only have two retired annuitant investigators actively working our cases in Northern California. The Department of Personnel Administration approved the use of the Special Investigator classification for the BRN in January 2011. However, we have not been allowed to hire for any of these positions. Because we only have the two retired annuitant investigators and the one BRN investigation analyst was hired by the Probation Program we have changed our complaint intake review process by moving it back to the case analysts. All complaints determined to need formal investigation and prioritized as high or urgent are referred to the DOI regardless of whether the complaints meet the DOI case investigation criteria. Only routine case investigations are being held for BRN investigation.

We have sent back 30 cases to DOI which were reviewed by the NECs for focused investigations. An additional 116 of our oldest cases have also been sent back to DOI for investigation. DOI has met with Rico Stephan and Stacie Berumen to review and identify cases that will be returned to DOI for investigation. The BRN cases have been identified by zip code and can be referred back to offices who can handle the additional workload.

### **Statistics**

There are 603 pending DOI investigations and 551 pending BRN investigations. There are 1,194 cases pending at the AG's office which continues to be the highest ever. The BRN continues to be the AGO's biggest client, surpassing the Contractor's State Licensing Board.

From July 1, 2010 to February 25, 2011, enforcement served 729 accusations. Enforcement prepared nine (9) default decisions from July 1, 2010 to February 25, 2010, prior to the process returning to the AG's office on July 27, 2010.

Please review the old monthly enforcement report (attachment) which has additional breakdowns of information. The new report required to be submitted to the Deputy Director of Enforcement and Compliance will be included in the next committee packet due to quarterly reporting.

### **NEXT STEPS:**

Begin filling CPEI positions when the hiring freeze is lifted. Resolve fingerprint issue with DOJ. Regain ability to prepare default decisions. Continue to monitor statistics for improvement in case processing time frames. Seek direction from the committee.

### **FINANCIAL**

None at this time. Updates will be provided at each DDC



**IMPLICATIONS,  
IF ANY:**

meeting for review and possible action.

**PERSON(S) TO CONTACT:**

Stacie Berumen, Enforcement Division Chief or  
Kathy Hodge, Enforcement Program Manager  
(916) 574-7678

# CALIFORNIA BOARD OF REGISTERED NURSING ENFORCEMENT STATISTICS

January 31, 2011

STATISTICAL DESCRIPTION	2006-07	2007-08	2008-09	2009-10	2010-11	Projected FY 2010-11
Complaints Received	3,361	3,900	5,794	7,483	4,591	7,870
Consumer Complaints	2,499	2,781	3,323	2,190	1,734	2,973
Convictions/Arrests	862	1,119	2,471	5,293	2,857	4,898
Referred to Diversion Program	367	332	400	604	298	511
Division of Investigation (Sworn)-Assigned	580	816	582	484	350	600
Division of Investigation Closed	491	771	748	1,015	61	105
Division of Investigation Pending	1,291	1,336	1,170	641	532	
BRN Investigations (Non Sworn)-Assigned				58	29	50
BRN Investigations Closed				14	36	62
BRN Investigations Pending				40	41	
BRN Desk Investigations Assigned	2,645	3,140	5,650	7,865	4,443	7,617
BRN Desk Investigations Closed	1,975	2,319	3,519	7,116	4,171	7,150
BRN Desk Investigations Pending	829	928	1,677	1,887	2,106	
Criminal Actions Filed	7	23	22	21	3	5
Total Cite and Fine Citations Issued	17	35	115	181	60	103
Referred to Attorney General	314	436	515	766	762	1,306
Cases Pending at Attorney General	604	599	692	838	1,207	
Petitions to Revoke Probation Filed	44	74	59	91	32	55
Accusations Filed	336	404	359	696	594	1,018
Statements of Issues Filed	22	16	14	13	23	39
Total Pleadings	314	494	432	800	649	1,113
Orders to Compel Examination (Sec. 820)	5	6	4	4	3	5
Interim Suspension Order	3	1	2	8	3	5
PC23	2	4	8	6	5	9
Applicant Disciplinary Actions:						
(a) License Denied	19	17	15	27	30	51
(b) License Issued on Probation	15	10	4	9	3	5
Total, Applicant Discipline	34	27	19	36	33	57
Licensee Disciplinary Actions:						
(a) Revocation	101	121	131	243	138	237
(b) Probation	120	131	139	176	147	252
(c) Suspension/Probation	6	10	6	1	0	0
(d) License Surrendered	67	73	79	92	69	118
(e) Public Reprimand/Reproval	9	3	8	12	14	24
(f) Decisions Other	3	1	5	2	4	7
Total, Licensee Discipline	306	339	368	526	372	638
Process Used for Discipline (licensees)						
(a) Administrative Hearing	44	38	56	58	57	98
(b) Default Decision	76	101	105	206	105	180
(c) Stipulation	186	200	207	262	211	362
Total	306	339	368	526	373	639

\*Fiscal Year to Date

**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM: 8.5**  
**DATE: March 10, 2011**

**ACTION REQUESTED:** Information Only: Probation Program Update and Statistics

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

**PROGRAM UPDATE**

**Staff**

The probation program has a vacant limited term Office Technician position and completed recruitment efforts to fill this position. With the limitations of only being allowed to hire DCA lateral transfer candidates, we did not receive any eligible candidates. The position has 19 months remaining of the 24 months allowed.

**Program**

The Probation Program staff completed the course design for the probation monitor training. This course will be comprehensive training to provide actual tools and knowledge for probation monitors state wide. The probation staff will provide a portion of the training on February 28 and March 1, 2011. Additionally, the probation staff will provide training at the third Enforcement Academy in March.

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records. Updates will be provided at each DDC meeting.

The Probation Program is assisting the Legal Affairs Division with the review and update of the Recommended Guidelines for Disciplinary Orders and Conditions of Probation. They were last revised in 2002 and are long overdue for cleanup and to incorporate recent legislative and regulatory changes.

**STATISTICS**

Below are the statistics for the Probation program from December 18, 2010 to March 9, 2011.

Probation Data	Numbers	% of Total
Male	106	24%

Female	330	76%
Chemical Dependency	247	57%
Probation Data	Numbers	% of Total
Practice Case	142	33%
Mental Health	3	<1%
Conviction	47	11%
Advanced Certificates	34	8%
Southern California	234	54%
Northern California	202	46%
Pending at the AG	79	18%
License Revoked	0	0
License Surrendered	5	1%
Terminated	5	1%
Completed	14	3%
Total in-state probationers	436	

**NEXT STEP:**

Continue to develop probation monitor procedure manual.  
Follow directions given by committee and/or board.

**FINANCIAL  
IMPLICATIONS,  
IF ANY:**

None at this time. Updates will be provided at each DDC meeting for review and possible action.

**PERSON TO CONTACT:**

Beth Scott, Probation Program Manager  
(916) 574-8187

**BOARD OF REGISTERED NURSING  
DIVERSION PROGRAM  
STATISTICAL SUMMARY  
December and January**

	CURRENT MONTHS	YEAR TO DATE (FY)	PROGRAM TO DATE
<b>INTAKES COMPLETED</b>	24	99	4,195
<b>INTAKE INFORMATION</b>			
Female	20	74	3302
Male	4	25	893
Average Age	25-29		
Most Common Worksite	Hospital		
Most Common Specialty	Medical Surgical		
Most Common Substance Abused	Alcohol/Hydrocodone		
<b>PRESENTING PROBLEM AT INTAKE</b>			
Substance Abuse (only)	14	62	2,751
Mental Illness (only)	0	1	145
Dual Diagnosis	9	35	1257
Undetermined	1	1	42
<b>REFERRAL TYPE*</b>			
Self	10	32	1279
Board	14	64	2916
*May change after Intake			
<b>ETHNICITY (IF KNOWN) AT INTAKE</b>			
Asian	1	3	83
African American	0	2	131
Hispanic	1	8	158
Native American	1	1	29
Pacific Islander	1	2	16
Caucasian	20	83	3453
Other	0	0	59
Not Reported	0	0	266
<b>CLOSURES</b>			
Successful Completion	16	54	1538
Failure to Derive Benefit	0	0	102
Failure to Comply	6	8	914
Moved to Another State	0	0	51
Not Accepted by DEC	1	2	41
Voluntary Withdrawal Post-DEC	1	4	284
Voluntary Withdrawal Pre-DEC	3	10	402
Closed Public Risk	3	24	206
No Longer Eligible	0	2	19
Client Expired	0	1	37
<b>TOTAL CLOSURES</b>	30	105	3594
<b>NUMBER OF PARTICIPANTS: 493 (as of January 31, 2011)</b>			

**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM:** 8.6  
**DATE:** March 10, 2011

**ACTION REQUESTED:** Information Only: Diversion Program Update and Statistics

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

**PROGRAM UPDATE**

As a result of the Department of Consumer Affairs' recent legal decision requiring all board Diversion Evaluation Committees (DECs) meetings post the meetings on the respective board web sites, some participants have voiced concerns about coming to the meetings and continuing with their recovery. They are not sure what impact the information posted on the internet will have on their recovery program. Staff remains vigilant regarding participant apprehension to determine if it impedes the recovery of any participants. Subsequently, on February 10, 2011, seven students from one of the nursing schools attended a DEC meeting in the Bay area believing it was similar to a regular BRN board meeting. The DEC members and program manager took the opportunity to educate the students about the Diversion Program regarding the dangers of substance abuse and its correlation with stress in the nursing workplace. They were invited to return to the official DDC and board meetings in March and April 2011.

On March 16, 2011, First Lab will provide a "Best Practices Conference" in Sacramento regarding substance abuse and drug testing. Dr. Donna Smith and Dr. Anthony Constantino, nationally recognized experts in this field, will be presenters. Dr. Donna Smith was instrumental in developing the Department of Transportation (DOT) national guidelines and Dr. Constantino is a published expert in forensic toxicology. The board members, DEC members, and BRN staff are invited to attend the training. An update will be provided at the next meeting.

On April 18, 2011, the program manager, Carol Stanford and program director, Virginia Matthews will be presenters at an education seminar sponsored by the Hospital Association of Southern California. This seminar will provide critical information regarding the BRN's Diversion Program and will be attended by Human Resources Executives/Directors/Specialists and Chief Nursing Officers/Executives who are aware that RNs are not immune from the disease of substance abuse and mental illness. A draft copy of the agenda is available upon your request.

**Contractor Update**

BRN staff along with other Program Managers from other boards attended HIPAA training sponsored by Maximus on January 11, 2011. The objectives of the training was to; know what HIPAA is and the requirements for handling Protected Health Information (PHI), understand the Maximus policy on

HIPAA and PHI, and understand individual's rights under HIPAA.

BRN began increasing drug testing in response to implementing SB1441. A review of trend data shows no significant increase in positive test results. Additionally, there does not appear to be any noteworthy increase in relapses over the past quarters. Virginia Matthews, Maximus Program Director, will present a brief report and overview regarding upcoming events and developments.

**Diversion Evaluation Committees (DEC)**

In a concerted effort to fill the six outstanding physician vacancies on our committees our new staff sent over 300 letters out on February 23rd to physician members of the California Society of Addiction Medicine (CSAM). The physicians were invited to submit an application and resume to the BRN if they are interested in giving back to our health communities by becoming DEC members for the BRN's Diversion Program. We immediately received positive responses to our request.

There are currently 12 vacancies as follows: four Registered Nurses, six Physicians, and two Public members. Recruitment efforts continue.

**Statistics**

Attached is the Monthly Statistical Summary Report for December 2010, and January, 2011. As of January 31, 2011, there were 1,528 successful completions.

**NEXT STEPS:** None

**FINANCIAL  
IMPLICATIONS,  
IF ANY:**

None at this time. Updates will be provided at each DDC meeting for review and possible action.

**PERSON TO CONTACT:** Carol Stanford, Diversion Program Manager  
(916) 574-7616

**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM:** 8.6.1

**DATE:** March 10, 2011

**ACTION REQUESTED:** Diversion Evaluation Committee Resignation

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in chemical dependency and/or mental health.

The following Diversion Evaluation Committee member has resigned for personal reasons. Her efforts will be recognized and a letter of appreciation will be mailed out.

**RESIGNATION**

<u><b>NAME</b></u>	<u><b>TITLE</b></u>	<u><b>DEC</b></u>	<u><b>NO</b></u>
Rhonda Ceccato	Public	Oakland	13

**NEXT STEPS:** Continue recruiting efforts

**FINANCIAL  
IMPLICATIONS,  
IF ANY:** None at this time.

**PERSON TO CONTACT:** Carol Stanford, Diversion Program Manager  
(916) 574-7616



**BOARD OF REGISTERED NURSING**  
**Diversion/Discipline Committee**  
**Agenda Item Summary**

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**AGENDA ITEM:** 8.6.2

**DATE:** March 10, 2011

**ACTION REQUESTED:** Diversion Evaluation Committee Member  
Appointments and Reappointments

**REQUESTED BY:** Stacie Berumen, Enforcement Division Chief

**BACKGROUND:**

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in substance use and abuse disorders and/or mental health.

**APPOINTMENTS**

Below are the names of candidates who were interviewed and are being recommended for appointment to the Diversion Evaluation Committees (DEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2015

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Glen Weedeem	Physician	Burbank	8
Christopher Schaal	RN	Bay Area	2

**REAPPOINTMENTS**

Below are the names of members who are being recommended for reappointment to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2015

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Marshall Alameida	RN	Bay Area	2
Judith Morgan	Public	Oakland	13
Deborah Steele	RN	Fresno	5
Mary Hegarty	RN	San Jose	7
Fran Goodman	RN	San Jose	7
William Slavin	Public	Burbank	8
Cindy Simpson	Public	Santa Ana	14

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2014

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Romana Zvereva	Physician	Los Angeles	3
Suzette Otlewis	Nurse	Orange County	4

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2013

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Robert Rowden	Physician	Sacramento	1
Janis Jones	Nurse	Palm Springs	6
David Silverman	Public	San Jose	7
Sara Ohringer	Nurse	Burbank	8
Juan Martinez	Public	North Central	12
Barbara Leva	Nurse	Santa Ana	14

**NEXT STEP:** Continue recruiting efforts

**FINANCIAL  
IMPLICATIONS:** None

**PERSON TO CONTACT:** Carol Stanford, Diversion Program Manager  
(916) 574-7616